

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 01-1768**

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JAMES N. FLEMING; ELLISON JACKSON,

Plaintiffs - Appellants,

versus

CITY OF CHARLOTTESVILLE,

Defendant - Appellee,

and

JANE DOE; JOHN DOE,

Defendants.

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Appeal from the United States District Court for the Western  
District of Virginia, at Charlottesville. Norman K. Moon, District  
Judge. (CA-00-77-3)

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Submitted: December 11, 2001

Decided: December 20, 2001

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Before NIEMEYER, LUTTIG, and MOTZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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J. Benjamin Dick, Charlottesville, Virginia, for Appellant.  
Richard W. Schaffer, D. Hayden Fisher, SCHAFFER & CABELL, P.C.,  
Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

James N. Fleming and Ellison Jackson ("Plaintiffs") appeal from the district court's order dismissing without prejudice their 42 U.S.C.A. § 1983 (West Supp. 2001) claim. We dismiss the appeal for lack of jurisdiction.

The district court's order dismissing without prejudice Plaintiffs' selective prosecution and liberty interest claims is not appealable. See Domino Sugar Corp. v. Sugar Workers' Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). A dismissal without prejudice is a final order only if "'no amendment [of the complaint] could cure the defects in the plaintiff's case.'" Id. at 1067 (quoting Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461, 463 (7th Cir. 1988)). In ascertaining whether a dismissal without prejudice is reviewable in this court, we must determine "whether the plaintiff could save his action by merely amending his complaint." Domino Sugar, 10 F.3d at 1066-67.

Because their complaint was dismissed without prejudice, Plaintiffs may yet file an amended complaint specifically alleging facts sufficient to state their claims under § 1983. Therefore, the dismissal order before us is not appealable. Accordingly, we dismiss the appeal for lack of jurisdiction under Domino Sugar. We dispense with oral argument because the facts and legal contentions

are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED